

January 31, 2003

TO: Interested Persons

FROM: Alan Mitchell
Manager, Power Plant Siting

SUBJECT: **LATEST DRAFT OF LANGUAGE FOR PARTS 4410.7600 TO 4410.7690**

On August 28, 2002, the EQB staff held a meeting with interested persons to discuss possible amendment of the Special Rules for Environmental Review of Large Electric Power Generating Plants and High Voltage Transmission Lines in Proceedings Before the Public Utilities Commission. In response to the comments that were received at the August meeting, the staff prepared another draft of the rules, and the EQB published notice in the October 14, 2002, State Register that it was soliciting comments on the proposed rule amendments. Five persons filed comments on the draft rules by the December 6, 2002, deadline: the Sierra Club, the Minnesota Center for Environmental Advocacy, the Public Utilities Commission, the Department of Commerce, and the Minnesota Transmission Owners. These comments are available on the EQB webpage: <http://www.mnplan.state.mn.us/eqb/Docket.html?Id=3049>

The EQB staff has now prepared another version of the amendments, taking into account the written comments that were received and other information developed as we gain experience in administering the new power plant siting statutes and procedures. This latest version is being made available to interested persons for review. The language is continually under review, of course, and if you have any comments about the latest version, please give me a call at (651) 296-3714 and let me know what your comments are.

Our intention is to advise the EQB Board at its meeting on February 20 of the intent to amend the rules. This will mark the first time the new Board members will meet. In March we hope to be able to bring a Statement of Need and Reasonableness and proposed rules to the Board for authorization to go forward with the formal rulemaking process.

The following discussion gives a brief explanation of the changes that are being suggested in the rules from what was included in the October version. The Statement of Need and Reasonableness, of course, will provide more detail about all of the proposed provisions.

EXPLANATION OF CHANGES

4410.5200. EQB MONITOR PUBLICATION REQUIREMENTS

This is simply an update of the references in this provision.

4410. APPLICABILITY AND SCOPE

Subpart 2. Deleted the second sentence to avoid any confusion that the PUC could still require an applicant to provide certain information.

4410.7610. DEFINITIONS

Subp. 2. Associated facilities. This definition helps determine what is included within the phrase “associated facilities.” The language is the same as that in 4400.0200.

Subp. 4. EQB. There are several references to EQB throughout the rules so it seems helpful to define EQB.

Subp. 5. Environmental Report. Some people do not like the use of the term “environmental assessment,” for the environmental review document that will be prepared under the rules. This draft uses the term “environmental report” instead, although the definition itself has not been changed and the kind of review anticipated has not been changed. We proposed initially to call the environmental review document an “environmental assessment” because that is the term used in chapter 4400 for the review that is conducted on projects that qualify for the alternative review process, which takes six months, the same as the statutory timeframe for the certificate of need process, and we were trying to minimize the different names that were used.

“Environmental report” is the term used in the existing rules. Part 4410.7000 – 4410.7500. It is also the term used by the PUC in its rule, 7849.0230. There is no reason why it can’t be used here as well.

Subp. 6. High voltage transmission line. The definition has been changed to correspond to the definition in the PUC statute, Minn. Stat. § 216B.2421, rather than the definition in the Power Plant Siting Act, because the environmental review triggered under these rules results from a PUC proceeding. While the definition in the PUC statute is not identical to the one in the Power Plant Siting Act, they are close enough to not cause any problems in interpreting what falls within the rules.

Subp. 7. Large electric power generating plant. This is the language from section 216B.2421 also.

4410.7620. ENVIRONMENTAL REVIEW BEFORE THE PUBLIC UTILITIES COMMISSION.

The Sierra Club and the Minnesota Center for Environmental Advocacy commented that the EQB should make a recommendation to the PUC as part of its environmental review. Environmental review, however, is an information gathering process only, and an RGU does not make any recommendations on the merits of a project as part of the environmental review. There is nothing included in these rules that requires the EQB to make any recommendations as part of preparing an environmental report.

4410.7625. COMMENCEMENT OF ENVIRONMENTAL REVIEW.

This part has simply been renumbered.

4410.7630. PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1. Notice to interested persons. This is a new provision that identifies the persons who are to be mailed notice that the EQB has received a certificate of need application or transmission planning report with a certification request, including residents and landowners in the area of the proposed project. The notice is given by the EQB, not the utility.

Subpart 2. Content of notice. This is a new provision that more specifically describes what is to be included in the notice. The notice is not as descriptive as the notice required under the Power Plant Siting rules (chapter 4400) but it does provide necessary information about the project and the process.

Subpart 3. Public meeting. I know people would like more notice of the public meeting but with only a few months to complete the environmental review, it is not possible to extend these timeframes. With all the transmission planning that is required under the PUC rules (chapter 7848), the public should have notice of proposed HVTLS well in advance of an actual application.

Subpart 9. Time frame for completion of environmental report. There is some editing of the language here but the main concept, that the environmental report must be completed within four months from the time the information is submitted to the EQB, remains intact. This four month deadline applies to both certificates of need and to transmission planning.

4410.7635. CONTENT OF ENVIRONMENTAL REPORT.

The changes here are editing. In subpart 3, if people have some additional suggestions for the kinds of impacts to always evaluate as part of a HVTL proposal, please forward those along.

4410.7660. ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Subpart 1. PUC decision. This language comes from suggestions made by the PUC.

Subpart 3. PUC hearing. This subpart is proposed to be deleted because the matters it addressed are now included in subpart 1.

4410.7665. REVIEW BY OTHER GOVERNMENTAL BODIES

This language was in the October 14 version but it is being moved to its own part to avoid any confusion.

4410.7670. JOINT PROCEEDING

A number of commenters want the rules to address how a certificate of need proceeding and an EQB permitting proceeding might be combined. Combining the two processes can make sense when the certificate of need application and the permit application have both been filed at the same time. This rule addresses that issue.

Subpart 1. Environmental assessment. This language allows the EQB to decide on its own accord to conduct one environmental review when an applicant has applied for both a certificate of need and an EQB permit when the project qualifies for alternative review under EQB rules. If the project qualifies for alternative review, the EQB has only six months to act on the application. Since both the PUC and the EQB have the same six months to act, it makes sense to simply recognize the authority of the EQB to decide to prepare one environmental review document. In such event, the document would be called an environmental assessment since that is what the Power Plant Siting Act and the chapter 4400 rules require.

Subpart. 2. Environmental impact statement. On the bigger projects that have to undergo full review under the Power Plant Siting Act and rules, the EQB has to prepare an EIS and has one year to make a decision. Since this is longer than the six months the PUC has to decide on need, environmental review in this situation can only be combined if the applicant agrees.

Subpart 3. Joint hearing. This language is the same as the language recently adopted in 4400.1800, subp. 3. The purpose of this provision is to address combining the hearing, regardless of whether the environmental review is combined.

4410.7680. ALTERNATIVE FORM OF REVIEW.

This rule is being revised to simply provide that the environmental review established in these rules is approved as an alternative form of review by the EQB.

4410.7690. COSTS OF PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1 adds language to require a utility to pay for preparation of an environmental report on a HVTL project that is part of a certification request included in a transmission planning report.

[old] 4410.7690. EMERGENCY PERMITS

PUC says that this language is unnecessary so we are deleting it.

4410.4300. MANDATORY EAW CATEGORIES

There is one other matter to bring to your attention. During the consideration of the amendments to chapter 4400 before the EQB Board on December 19, the Sierra Club (Paula Maccabee) objected to the adoption of exception language in part 4400.0650 regarding certain modifications of existing power plants. The Sierra Club would prefer that the EQB require a permit for certain modifications that are exempt under this provision, but whether or not a permit from EQB is required, the Sierra Club would at least like to see some environmental review of such modifications. A way that that could be done is to add language to part 4410.4300 mandating an Environmental Assessment Worksheet for certain modifications.

The staff would like to get your reaction to this concept. Also, we would appreciate hearing your suggestions for the appropriate criteria to trigger mandatory review. The language below puts forth one suggestion for requiring a mandatory EAW for certain modifications. Under this language, the EQB is the RGU that would prepare the EAW. The reason for that is because the EQB is the RGU now for power plants and transmission lines requiring an EAW under part 4300.

Subp. 3a. **Modification of existing large electric power generating plants.**
Items A through D designate the RGU for the type of project listed:

A. For modification of a large electric power generating plant to increase the efficiency that is exempt from EQB permitting under part 4400.0650, subpart 1, item C(2) and that will increase the capacity of the existing facility by more than 25 megawatts, the EQB shall be the RGU.

B. For refurbishment of a large electric power generating plant that is exempt from EQB permitting under part 4400.0650, subpart 1, item C(3) and that will extend the life of the facility by more than five years, the EQB shall be the RGU.

C. For conversion of the fuel source of a large electric power generating plant to natural gas, the EQB shall be the RGU.

D. For the start-up of a large electric power generating plant that has been closed for more than one year, the EQB shall be the RGU.